UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

HAVEN HEALTH CENTER OF WINDHAM, LLC Employer [1] and TEAMSTERS LOCAL 493 Petitioner	Case No. 34-RC-2134

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, I find that: the hearing officer's rulings are free from prejudicial error and are affirmed; the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer.

The Employer operates a 124-bed rehabilitative and long-term skilled medical care facility in Willimantic, Connecticut (herein called the facility). The Petitioner seeks to represent a unit consisting of approximately 23 full-time and regular part-time Licensed Practical Nurses, all of whom serve as charge nurses (herein called LPNs or charge nurses). There is no history of collective bargaining involving the employees in the petitioned-for unit. The Employer contends that the petition should be dismissed because all the petitioned-for LPNs are supervisors within the meaning of Section 2(11) of the Act. For the reasons noted below, I find no merit to the Employer's contention.

[1] The Employer's name appears as corrected at the hearing.

I. FACTS

A. Overview of Operations

Administrator Jack Hooker is primarily responsible for the operation and overall supervision of the facility. Reporting to Hooker is Director of Nursing Services (DNS) Joleen Donovan, who has overall responsibility for the facility's nursing department. Reporting to Donovan is Assistant Director of Nursing and Day Supervisor Joanie Coley; MDS Coordinators Chris Jenkins and Pam Parizo; Staff Development/Infection Control Nurse Nancy Gillis; Registered Nurse (RN) shift supervisors Barbara Colon, Fern Hammer, Betsy Harakaly, and Maria Gates; and per diem RN shift supervisors Carol Jordan and Tanya Goullart.[2]

The Employer's facility is physically divided into three clinical wings. Wing 1 is not physically divided into separate "units." Wing 2 is physically divided into two "units," 2 East and 2 West. Wing 3 is similarly physically divided into two "units," 3 East and 3 West. Wing 1 has 34 beds, Wing 2 has 40 beds, and Wing 3 has 50 beds. The facility operates 24 hours per day, 7 days per week, and is staffed on three shifts: the day shift, which runs from 7:00 a.m. to 3:00 p.m.; the evening shift, which runs from 3:00 p.m. to 11:00 p.m.; and the night shift, which runs from 11:00 p.m. to 7:00 a.m.

The Employer assigns one RN shift supervisor per shift who is responsible for overseeing the nursing staff throughout the facility. The RN shift supervisors are only on the resident floors when their presence is needed, for example, to complete paperwork or nursing reports, or to directly assist family or residents with concerns. The RN shift supervisor also assesses incoming residents, and, after reviewing the patient data collected by the charge nurse, approves the initial resident care plan. Although the charge nurses can be LPNs or RNs, the majority of which are LPNs, RN shift supervisors are required to be registered nurses. [3]

With regard to charge nurses, there are five charge nurses on the facility's day shift and five charge nurses on the evening shift. Each of these shifts is staffed as

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[2] The Union does not seek to represent any of these individuals, and their unit placement is not in issue.

[3] The Union does not seek to represent any charge nurse who is an RN, and their unit placement is not in issue.

follows: one on Wing 1, two on Wing 2, and two on Wing 3. On the night shift, there are three charge nurses, one on each of the three wings.

A total of 75 certified nurses aides (CNA) staff the three clinical wings. On Wing 1, the day shift has 3.5 CNAs, [4] the evening shift has two CNAs, and the night shift has one CNA. On Wing 2, there are six CNAs during the day shift, five CNAs during the evening shift, and two CNAs during the night shift. On Wing 3, there are seven CNAs during the day shift, five during the evening shift, and two during the night shift. One CNA "floats" to all three wings during the night shift. CNAs are responsible for assisting patients with activities of daily living (also referred to by the parties as "ADL"), including patient hygiene, toileting, dressing, assisting with ambulation, and hair and oral care. All ADL care is performed by CNAs.

B. Charge Nurse Duties and Responsibilities

As noted above, the Employer contends that the 23 petitioned-for LPN charge nurses are supervisors. The parties stipulated that LPNs do not have the authority to hire, lay off, recall, promote, reward, or discharge other employees. However, the parties dispute whether LPNs have the authority to transfer, suspend, assign, discipline, or responsibly direct employees, or adjust their grievances, or effectively recommend such actions.

The Employer proffered the LPN charge nurse job description in support of its contention that LPNs are supervisors. In this regard, the LPN charge nurse job description states that their primary function is to "oversee" certified staff and deliver quality care to adult and geriatric residents. The job description states that the LPN reports to the DNS, but also provides that the LPN performs nursing care under the direction of an RN as well as a nursing supervisor. The job description contains a list of 32 "job duties and responsibilities." References to purported supervisory responsibilities that are contained in the LPN job description include: "mak[ing] decisions relevant to nursing care required and delivered to each resident by the CAN;" "communicat[ing] and apply[ing] nursing and personnel policies to CNAs"; "assign[ing] and supervis[ing] CNAs, including the completion of daily CNA assignments"; assum[ing] independent responsibility for documenting disciplinary concerns of CNAs, including reprimands, warnings, and recommending suspension or discharge of employees"; "supervis[ing] the

[4] The ".5" designation refers to a CNA who only works from 5:30 a.m. to 1:30 p.m.

delivery of nourishment and/or diets to the residents"; "initiat[ing] and implement[ing] a nursing care plan, as well as updating the plan based on changes in resident condition;" "maintain[ing] knowledge of the residents' condition and tak[ing] appropriate action;" and "monitor[ing] the workflow of CNA staff on the wing." All other duties and responsibilities contained in the job description are directly related to resident care and the overall advancement of the Employer's mission.

The Employer also proffered CNA job descriptions in support of its contention that LPNs are supervisors. In this regard, the CNAs' primary function, according to the job description, is to perform "routine and non-professional tasks as assigned by the Charge Nurse in order to meet the personal needs and comforts of the residents." The job description also lists 15 job duties and responsibilities, which include "assum[ing] any duties that are assigned by the charge nurse in order to provide optimal achievable quality resident care."

In addition to the job descriptions, the Employer proffered the testimony of DNS Joleen Donovan. According to DNS Donovan, LPNs are responsible for directing the resident care provided by the CNAs on their "units" and ensuring the progression of their general work flow. This includes the preparation of resident care plans. In this regard, Donovan testified that LPNs collect data on incoming patients regarding their demographics, medical history, and fall, skin, and side rail assessments. The RN shift supervisor then assesses this data, and the LPN, using this assessment, prepares a resident care plan, which must be approved by the RN shift supervisor.

Charge Nurse Mary Benedict, however, testified that the resident care plans are primarily a compilation of previously assessed data accumulated for incoming residents on a "W-10," or transfer form, which lists any hospital procedures that were performed on the resident, as well as the resident's medical history, progress notes, and doctor's orders for resident care. The undisputed evidence also indicates that the charge nurses also prepare a "flow chart" setting forth all necessary "interventions" (viz. medical procedures) for each resident, including directives on a resident's food and skin care needs. The record indicates that the charge nurse's creation of the flow chart is largely governed by the W-10 and doctor's orders therein, as well as the RN shift supervisor's assessments. The flow charts are kept in a book located at the nursing stations. The CNAs utilize the flow charts in providing daily care for each resident.

CNAs work schedules are not prepared by the LPN charge nurse. Rather, they are prepared by a scheduler, another member of the nursing department, who is responsible for scheduling the CNAs.[5] In this regard, she prepares the daily master schedule which shows the shift and wing to which each CNA is assigned. Charge nurses in turn prepare a daily assignment sheet for each CNA based in part upon the report of the charge nurse from the previous shift, which is distributed to the CNAs at the beginning of each shift. The assignment sheet lists the names of the residents whom they will be assisting, their room number, and the patient care tasks that need to be completed for each patient. The MDS Coordinator may also add duties to the assignment sheet.

With further regard to determining CNA assignments, the charge nurses' role varies with the shift. On the day shift, CNAs have regular patient assignments. On the other shifts, CNAs report to the charge nurse for their assignments. According to DNS Donovan, the charge nurses consider which CNAs know which particular patients the best, as well as each CNA's generally known strengths and weaknesses, in determining assignments. Charge Nurse Benedict, however, testified that with regard to CNA assignments, the charge nurses' main role is to ensure that the work tasks are evenly distributed, particularly with regard to tasks involving the lifting of patients using heavy machinery.

Once the CNAs commence their assignments, the CNAs cross-reference the tasks on their assignment sheet with each resident's flow chart, and are responsible for documenting all interventions on the flow charts. According to DNS Donovan, each charge nurse makes rounds on the wings, including observing patients and reviewing CNA assignment sheets, to ensure that the CNAs are following the directives on the assignment sheet. The charge nurses are also responsible for ensuring that the CNAs complete the flow charts. As previously noted, Charge Nurse Benedict testified that the charge nurses' main role is to ensure that the work tasks are evenly distributed.

If there are changes in a patient's condition, the CNAs report them to the charge nurse, who in turn reports the changes to the RN shift supervisor. According to DNS Donovan, the charge nurses are then responsible for updating patient care plans and implementing new interventions in response to the changed circumstances, and

[5] The scheduler position is currently occupied by a CNA.

reflecting such changes on the CNA assignment sheets. The charge nurse might also inform CNAs of these changes verbally if they occur towards the end of a shift. Donovan testified that the charge nurse determines which CNA performs an intervention based on the charge nurse's knowledge of a CNA's skill and experience, as well as whether the CNA is new to the unit, the floor, or the patient.

With regard to the charge nurse's authority to re-assign CNAs, it is undisputed that a charge nurse may instruct a CNA to exchange assignments with another CNA if, for example, the resident does not interact well with a CNA, or if there is a conflict between CNAs. In those cases, the charge nurse may switch CNA assignments from one patient to another. The charge nurse may also immediately remove a CNA from an assignment if the CNA is suspected of "foul play" or abuse toward a resident. However, such removal is mandated under state law. It is undisputed that charge nurses cannot assign CNAs to work on another shift or another wing without the permission of the RN shift supervisor. In this regard, the charge nurse must contact the RN shift supervisor to request such a transfer. The RN shift supervisor may reject the charge nurse's request if the shift supervisor determines that another wing cannot support a transfer because it is short-staffed, or has a disproportionate number of acute residents or new admissions.

With regard to LPNs directing CNAs' work in their assigned tasks, it is undisputed that when there is a change in patient condition, the charge nurse updates the resident care plan to reflect any changed interventions that the CNA must perform as a result of the change. The charge nurse performs rounds to ensure that the CNA complies with the changed circumstances. The charge nurse may also verbally remind the CNA at the beginning or the end of the shift of the required interventions for a particular patient. Charge Nurse Anne LeBlanc, however, testified that aside from situations involving a change in a patient's medical conditions, CNAs work independently and generally without charge nurse direction. LeBlanc testified that at the beginning of the shift, the charge nurse meets with the CNAs to inform them of the patients' medical status on the floor, and any particular changes that may have arisen. After giving their report to the CNAs, charge nurses generally work at the nursing stations, unless they are giving pills or treatments to the residents. Hence, they do not spend a lot of time instructing CNAs in how to do their daily nursing work. LeBlanc, as well as Charge Nurse Mary Benedict,

testified that charge nurses perform rounds to ensure that CNA are complying with assignment sheet directives.

Charge nurses cannot authorize the leave requests of CNAs, nor can they excuse CNAs' late arrival or approve CNAs for early departure. In all of these instances, the CNA must first obtain permission from the RN shift supervisor.

With regard to whether charge nurses are held accountable for the work performed by the CNAs, the Employer presented notes dated May 19, 2004 of a licensed staff meeting attended by LPNs and RNs. The notes state, in relevant part, "[y]ou are held accountable for the C.N.A.'s (sic) actions."[6] The Employer also relies on Donovan's general testimony that the facility holds charge nurses responsible for resident care on the wings. Notwithstanding the foregoing, DNS Donovan acknowledged that no charge nurse has ever been disciplined for failing to properly supervise a CNA. Moreover, according to the Petitioner's witnesses, the charge nurses' responsibility is limited to ensuring that CNAs complete the resident care duties on their assignment sheets in a timely manner. If a CNA fails to complete their assigned tasks, the charge nurse goes to the CNA, asks them why the task was not completed, and reminds the CNA to complete the assignment. If the CNA fails to complete the task, the charge nurse reports the incident to the RN shift supervisor. Charge Nurse LeBlanc testified that should a CNA not perform the required patient tasks, the RN shift supervisor would advise the charge nurse of her responsibility to remind CNAs to complete all of the tasks on their assignment sheet. The Employer also proffered charge nurse evaluations as evidence that LPN charge nurses are held accountable for failing to adequately direct the resident care provided by the CNAs. The LPN charge nurse evaluations are composed of the Employer's aforementioned LPN charge nurse job description, with boxes next to each duty and responsibility. Charge nurses are annually rated in one of four categories for each job duty and responsibility: exemplary, commendable, quality, and needs development. With regard to charge nurse accountability for CNA work performance, one factor rated in the job evaluation is

[6] The notes go on to state "[b]e sure you have good communications with them, and they are aware of any changes in the resident's conditions and/or abilities. Also, some C.N.A.'s (sic) still require their work to be checked. This holds especially true for those who work half a shift, i.e. 3-8, 7-12p, etc. Make sure the residents are re-assigned to C.N.A.'s (sic) who remain on the floor. We have been coming across issues where patients aren't getting care on last rounds."

"accountab[ility] for the total operation of the unit in regards to resident care and maintenance of resident records."

With regard to the charge nurses' disciplinary authority, the record indicates that there are three ways in which CNAs can be put on notice regarding their job performance. In this regard, if a charge nurse observes any alleged CNA misconduct, such as not following the patient care plan or assignment sheet, or not performing the ADLs on a patient, the charge nurse initially counsels the CNA regarding the appropriate procedures to follow in providing resident care, and sends the CNA back to the floor to perform the tasks. Should the CNA fail to follow the charge nurse's directive, the charge nurse can issue to the CNA an "educational counseling" form, entitled "corrective action – educational component." The record clearly establishes that educational counseling is non-disciplinary in nature. It is simply a vehicle to remind CNAs of appropriate resident care procedures.

According to Donovan, CNAs may be formally disciplined pursuant to a "progressive disciplinary system" that is generally referred to in the employee handbook. Such discipline may, according to Donovan, be issued by the Administrator, the RN shift supervisor, charge nurses, or herself. Discipline proposed by the charge nurse is reviewed by the RN shift supervisor, who may or may not sign it before passing it along to the DNS. Donovan acknowledged that she "independently investigates" all such disciplinary offenses, and relies on the accounts of the charge nurse and the CNA in what her testimony clearly reflects is a fact-gathering process. Included in her investigation is a review of the CNA's disciplinary record. After completing her investigation, the DNS makes the initial determination of the type of discipline to be imposed, which she then submits to the Administrator before placing it in the CNA's personnel file.

Charge Nurse Benedict confirmed that the charge nurse's main role in the disciplinary process is to memorialize the facts of the discipline, then present those facts to the RN shift supervisor. For example, if a CNA was insubordinate to a charge nurse, the charge nurse would report the incident to the RN shift supervisor. Another example is where a CNA challenges a charge nurse's job reassignment. If the charge nurse cannot resolve the situation informally, the charge nurse would either report the incident

to the RN shift supervisor, or write a factual summary of the situation and present it to the RN shift supervisor with a general recommendation for a "corrective action."

According to Charge Nurse LeBlanc, if a charge nurse witnesses CNA misconduct, she notifies the RN shift supervisor, and may ask if she can prepare a corrective action form. If the RN shift supervisor authorizes such action, the charge nurse transcribes the facts onto the form and presents it to the shift supervisor for approval.[7] LeBlanc also testified that the charge nurse typically is not present when any discipline is imposed. The RN shift supervisor does not always grant LeBlanc's request to prepare the corrective action form. Both LeBlanc and Benedict testified that it is the RN shift supervisor who determines what discipline, if any, will be imposed on the employee.

The Employer proffered only five completed "Notice of Corrective Action" forms prepared over the past three years.[8] On two of the forms, dated April 23, 2004, and April 29, 2005, no boxes were checked regarding the level of discipline to be imposed. It is unclear, therefore, whether any discipline was imposed. The form dated May 5, 2003, indicates the nature of the violation as "insubordination." Although signed by a charge nurse, the Employer was unable to describe the charge nurse's level of involvement in the preparation and issuance of the form. The remaining two forms, dated June 4, 2002, and November 14, 2002, were signed by Charge Nurse Anne LeBlanc. Her testimony regarding these corrective actions has been described generally above.

As to whether the Employer effectuates LPN suggestions for discipline, Donovan testified that there has never been an occasion where the charge nurse reported an incident and no discipline was warranted. Charge Nurse Benedict similarly testified that she could not recall a situation where she reported CNA patient care misconduct to a shift supervisor where the supervisor decided that no discipline was warranted.

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[7] Although LeBlanc described the memorialization of the incident as a "written warning," it is clear that there are no such documents utilized in the disciplinary system, and that she was merely referring to the corrective action form.

[8] Although there is no testimony or explanation in the record as to why the Employer was proffering only five forms over a three-year period, covering a classification of over 75 CNAs, in its post-hearing brief the Employer referred to these five documents as "examples of discipline imposed by charge nurses on CNAs."

However, Charge Nurse LeBlanc testified that she recalls incidents involving CNAs where the RN shift supervisor did not authorize disciplinary action.

Although there is no evidence that charge nurses have ever suspended a CNA, it is undisputed that charge nurses can direct a CNA to leave the facility if the CNA is suspected of resident abuse. However, such action is required by State regulations. It is also undisputed that this is the only situation in which charge nurses would be permitted to direct a CNA to leave the facility.

With regard to the preparation of CNA evaluations, it is undisputed that the RN shift supervisors primarily write the evaluations, and that the charge nurses' contributions are limited to providing oral input involving their direct observation of a CNA's work performance. There is no evidence that charge nurses make recommendations regarding CNA retention, suspension, probation, promotion, or wage increases. Furthermore, the charge nurse job evaluations that the Employer proffered indicate that charge nurses are no longer evaluated on the preparation of CNA job evaluations.

With regard to the adjustment of grievances, Donovan testified that CNAs can go to charge nurses with complaints involving conflicts with families, residents, and other CNAs. According to Donovan, the charge nurse will attempt to resolve the conflict herself, and will only contact the RN shift supervisor if unsuccessful. Petitioner's witnesses confirmed this testimony, but added that that they inform RN shift supervisors of all complaints, whether such complaints are resolved or not.

II. CONCLUSION

It is well established that the burden of proving supervisory status is on the party asserting it. *Kentucky River Community Care v. NLRB*, 532 U.S. 706 (2001). Based upon the foregoing and the record as a whole, I find that the Employer has failed to satisfy its burden of establishing that the LPN charge nurses possess and exercise supervisory authority within the meaning of Section 2(11) of the Act. In reaching this conclusion, I note the absence of any evidence that LPN charge nurses have the authority, in the interest of the Employer, to hire, layoff, recall, promote, suspend, discharge, or reward other employees. Thus, the only basis for finding that charge nurses are supervisors arises out of their purported authority to responsibly direct,

assign, transfer, and discipline CNAs, or adjust their grievances, or to effectively recommend any of these actions using independent judgment.

With regard to the charge nurses' authority to responsibly direct, assign and transfer CNAs, it is well-established that the authority to direct the work performed by CNAs, and to re-assign CNAs to different residents or job duties in response to resident care requirements, is considered routine in nature and does not confer supervisory status. *Franklin Home Health Agency*, 337 NLRB 826, 830 (2002); *Beverly Health and Rehabilitation Services, Inc.,* 335 NLRB 635, 669 (2001), enforcement granted in part, 317 F.3d 316 (D.C. Cir. 2003); *Clark Machine Corp.*, 308 NLRB 555, 555-556 (1992). In this regard, there is insufficient evidence to establish that charge nurses consider the particular skills and abilities of each CNA in making such assignments and transfers. Rather, it appears that the charge nurses consider the well-known skills and abilities of the CNAs, as well as other routine criteria such as the staffing levels of each unit, in making such decisions. To the extent that the charge nurses do consider the skills and abilities of particular CNAs in making resident assignments, it is well-established that assignments based on an assessment of employees' skills when the differences in skills are well known have been found to be routine in nature. See *Providence Hospital*, 320 NLRB 717, 727 (1996); *The Ohio Masonic Home*, 295 NLRB 390, 395 (1989). The record further establishes that the charge nurses' authority to direct and assign CNAs is circumscribed by standard operating procedures, such as regulatory requirements, Employer practices, resident care plans, and the largely routine nature of the CNAs' work assignments. *Washington Nursing Home*, 321 NLRB 366, fn. 4 (1996); *Chevron Shipping Co*., 317 NLRB 379, 381 (1995). Moreover, the direction given by the charge nurses to the CNAs regarding changes to resident care plans more closely resembles the sharing of information with co-workers, rather than the exercise of discretion or independent judgment. *Beverly Health and Rehabilitation Services, Inc.,* supra, at 669*.* I also note the absence of specific evidence establishing the degree to which charge nurses are held accountable for the manner in which they direct the work performed by the CNAs. *Franklin Home Health,* supra at 831. Furthermore, the charge nurses' input into the preparation of CNA job evaluations is informal and reportorial in nature, *Passavant Health Center*, 284 NLRB 887, 889 (1987), and there is no evidence that CNA evaluations have any impact on their terms and conditions of employment.

Harborside Healthcare, Inc., 330 NLRB 1334, 1335 (2000); *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 (1999).

With regard to the charge nurses' authority to resolve employee grievances, the charge nurses' role in the resolution of minor conflicts between CNAs and patients, families and co-workers is more akin to informal mediation, rather than the adjustment of grievances. Even assuming *arguendo* that the resolution of such conflicts constitutes the adjustment of grievances, the authority to resolve minor employee complaints is insufficient to confer supervisory status. See *The Ohio Masonic Home*, 295 NLRB at 395.

Thus, the only basis upon which to find that the charge nurses are supervisors under Section 2(11) is their involvement in the discipline of CNAs. In this regard, there is no dispute that charge nurses have the authority to report the facts involving alleged CNA misconduct to the RN Shift Supervisor, and that such reports have resulted in the low-level counseling or warning of some CNAs on a few occasions over the past three years. Such limited involvement in the disciplinary process, however, standing alone, is insufficient to confer supervisory status. See *Wilshire at Lakewood*, 343 NLRB No. 23, slip op. at 3 (2004); *Ryder Truck Rental*, 326 NLRB 1386, 1386 (1998); *Passavant Health Center*, 284 NLRB at 889. I also note the extensive involvement of the RN Shift Supervisor and the DNS in every disciplinary incident, and the undisputed fact that the charge nurse does not decide whether discipline will issue or the level of discipline to be imposed on the CNA. Such evidence supports the conclusion that the charge nurses' role in the discipline of CNAs is primarily reportorial in nature. See *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890, 890-891 (1997). I further note the absence of any evidence that the charge nurses' involvement in the disciplinary process has affected any CNAs' job status, pay or tenure. *Franklin Home Health Agency*, 337 NLRB at 830; *The Ohio Masonic Home*, 295 NLRB at 393-394. Finally, it is well-established that a charge nurse's authority, pursuant to existing policy and regulatory requirements, to remove a CNA from their work area as a result of resident abuse, is not an indicia of supervisory authority. See *Michigan Masonic Home*, 332 NLRB 1409, 1411 fn. 5

(2000); *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491, 497 (1993).[9]

Accordingly, I find that the petitioned-for LPNs are not supervisors within the meaning of Section 2(11) of the Act, and that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time LPN charge nurses employed by the Employer at its Willimantic, Connecticut facility; but excluding all other employees, and guards, professional employees, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted among the employees in the unit found appropriate herein at the time and place set forth in the notice of election to be issued subsequently.

Eligible to vote: those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were in the military services of the United States, ill, on vacation, or temporarily laid off; and employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and their replacements.

Ineligible to vote: employees who have quit or been discharged for cause since the designated payroll period; employees engaged in a strike who have been discharged for cause since the strike's commencement and who have not been rehired or reinstated before the election date; and employees engaged in an economic strike

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[9] In reaching this conclusion, I have considered the Second Circuit's decision in *NLRB v. Quinnipiac College*, 256 F.3d 68 (2nd Cir. 2001), which the Employer cites in its post-hearing brief for another proposition. Initially, I note that the Second Circuit's decision is contrary to well-established Board law that I am bound to apply in the instant case, and that the Board has not to date adopted the Second Circuit's decision in *Quinnipiac*. Nevertheless, I find that the facts underlying the Second Circuit's *Quinnipiac* decision are inapposite to the facts of the instant case. As noted above, the charge nurse's involvement in disciplining CNAs in the instant case is primarily reportorial in nature. Moreover, the charge nurse does not determine whether discipline will issue or the level of discipline to be imposed. Thus, in contrast to the Second Circuit's factual finding in *Quinnipiac*, the charge nurses in the instant case do not have the discretion to discipline employees.

which commenced more than 12 months before the election date and who have been permanently replaced.

The eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Teamsters Local 493.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before August 4, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlrb.gov. This request must be received by the Board in Washington by August 11, 2005.

Dated at Hartford, Connecticut, this 28th July, 2005.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
National Labor Relations Board
Region 34